

## HB0129S02 compared with HB0129

~~deleted text~~ shows text that was in HB0129 but was deleted in HB0129S02.

inserted text shows text that was not in HB0129 but was inserted into HB0129S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Derrin R. Owens proposes the following substitute bill:

### PROHIBITED CORRECTIONAL FACILITY ITEMS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jefferson S. Burton**

Senate Sponsor: ~~\_\_\_\_\_~~ Derrin R. Owens

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#### LONG TITLE

##### General Description:

This bill enacts provisions related to communication devices in correctional facilities.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;~~++~~
- ▶ makes it a crime to transport, provide, sell, or possess a communication device at a correctional facility or secure area of a mental health facility in violation of facility policy; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

## HB0129S02 compared with HB0129

None

### Utah Code Sections Affected:

AMENDS:

**76-8-311.3**, as last amended by Laws of Utah 2020, Chapters 302, 347

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **76-8-311.3** is amended to read:

**76-8-311.3. Items prohibited in correctional and mental health facilities --**

#### **Penalties.**

(1) As used in this section:

(a) "Communication device" means a device designed to receive or transmit an image, text message, email, video, location information, or voice communication, or any other device that can be used to communicate electronically.

(b) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

~~(b)~~ (c) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

~~(c)~~ (d) "Correctional facility" means:

(i) ~~[any]~~ a facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) ~~[any]~~ a facility operated by a municipality or a county to house or detain criminal offenders;

(iii) ~~[any]~~ a juvenile detention facility; and

(iv) ~~[any]~~ a building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

~~(d)~~ (e) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

~~(e)~~ (f) "Medicine" means ~~[any]~~ a prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include ~~[any]~~ a controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

~~(f)~~ (g) "Mental health facility" means the same as that term is defined in Section

## HB0129S02 compared with HB0129

62A-15-602.

~~[(g)]~~ (h) "Nicotine product" means the same as that term is defined in Section 76-10-101.

~~[(h)]~~ (i) "Offender" means a person in custody at a correctional facility.

~~[(i)]~~ (j) "Secure area" means the same as that term is defined in Section 76-8-311.1.

~~[(j)]~~ (k) "Tobacco product" means the same as that term is defined in Section 76-10-101.

(2) Notwithstanding Section 76-10-500, a correctional facility or mental health facility may provide by rule that no ~~{communication device, }~~ firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, communication device, spirituous or fermented liquor, medicine, or poison ~~[in any quantity]~~ may be:

- (a) transported to or upon a correctional or mental health facility;
- (b) sold or given away at ~~[any]~~ a correctional or mental health facility;
- (c) given to or used by ~~[any]~~ an offender at a correctional or mental health facility; or
- (d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to ~~[any]~~ a prosecution under this section if the accused in committing the act made criminal by this section with respect to:

(a) a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) An individual who transports to or upon a correctional facility, or into a secure area of a mental health facility, ~~[any] a {communication device, a} firearm, ammunition, a { } dangerous weapon, or an { } implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.~~

(b) An individual who provides or sells to ~~[any]~~ an offender at a correctional facility, or ~~[any]~~ a detainee at a secure area of a mental health facility, ~~[any] a {communication device, a}~~

## HB0129S02 compared with HB0129

firearm, ammunition, a ~~{}~~  dangerous weapon, or an implement of escape is guilty of a second degree felony.

(c) An offender ~~[who possesses]~~ at a correctional facility, or a detainee ~~[who possesses]~~ at a secure area of a mental health facility ~~[-, {} any]~~ who possesses ~~a communication device,~~ a ~~{}~~  firearm, ammunition, a ~~{}~~  dangerous weapon, or an implement of escape is guilty of a second degree felony.

(d) An individual, other than an offender, who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility , or a secure area of a mental health facility ~~{} , {}~~  
~~—— (i) } [any] a~~ firearm, ammunition, a dangerous weapon, or an implement of escape is guilty of a third degree felony ~~{} , or~~  
~~—— (ii) a communication device is guilty of a class A misdemeanor}.~~

(e) An individual violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells ~~[any]~~ an explosive in a correctional facility or mental health facility.

(5) (a) An individual is guilty of a third degree felony who ~~[-]~~ knowingly violates correctional or mental health facility policy or rule and, without the permission of the authority operating the correctional facility or secure area of ~~[a]~~ the mental health facility, knowingly transports to or ~~[upon a]~~ into the secure area of the correctional facility or into a secure area of ~~[a]~~ the mental health facility ~~[any]~~:

(i) a communication device;

~~({} )~~ (ii) spirituous or fermented liquor;

~~({} )~~ (iii) medicine, whether or not lawfully prescribed for the offender; or

~~({} )~~ (iv) poison ~~[in any quantity]~~.

(b) An individual is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule ~~[by providing or selling to any]~~ and, without the permission of the authority operating the correctional facility or the secure area of the mental health facility, knowingly provides or sells to an offender ~~[at a]~~ in a secure area of the correctional facility or detainee within a secure area of ~~[a]~~ the mental health facility ~~[any]~~:

(i) a communication device;

~~({} )~~ (ii) spirituous or fermented liquor;

## HB0129S02 compared with HB0129

~~[(ii)]~~ [(iii)] medicine, whether or not lawfully prescribed for the offender; or

~~[(iii)]~~ [(iv)] poison ~~[in any quantity]~~.

(c) An ~~[inmate]~~ offender is guilty of a third degree felony who ~~[, in violation of]~~ knowingly violates correctional or mental health facility policy or rule ~~[, possesses at a]~~ and, without the permission of the authority operating the correctional facility or the secure area of the mental health facility, knowingly possesses [at a] in a secure area of the correctional facility or in a secure area of ~~[a]~~ the mental health facility ~~[any]~~:

(i) a communication device;

~~(i)]~~ (ii) spirituous or fermented liquor;

~~[(ii)]~~ [(iii)] medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or

~~[(iii)]~~ [(iv)] poison ~~[in any quantity]~~.

(d) An individual is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell ~~[any]~~ a tobacco product, electronic cigarette product, or nicotine product to an offender, directly or indirectly:

(i) transports, delivers, or distributes ~~[any]~~ a tobacco product, electronic cigarette product, or nicotine product to an offender or on the grounds of ~~[any]~~ a correctional facility;

(ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport ~~[any]~~ a tobacco product, electronic cigarette product, or nicotine product to an offender or on ~~[any]~~ a correctional facility, if the person is acting with the mental state required for the commission of an offense; or

(iii) facilitates, arranges, or causes the transport of ~~[any]~~ a tobacco product, electronic cigarette product, or nicotine product in violation of this section to an offender or on the grounds of ~~[any]~~ a correctional facility.

(e) An individual, other than an offender, is guilty of a class A misdemeanor who ~~[,]~~ knowingly violates correctional or mental health facility policy or rule and, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses ~~[at a]~~ in a secure area of the correctional facility or in a secure area of ~~[a]~~ the mental health facility ~~[any]~~:

(i) a communication device;

~~(i)]~~ (ii) spirituous or fermented liquor;

## HB0129S02 compared with HB0129

~~[(ii)]~~ [(iii)] medicine; or

~~[(iii)]~~ [(iv)] poison [~~in any quantity~~].

(f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in [~~any~~] an activity that would facilitate the possession of [~~any~~] contraband by an offender in a secure area of the correctional facility.

(ii) The provisions of Subsection (5)(d) regarding [~~any~~] a tobacco product, electronic cigarette product, or nicotine product take precedence over this Subsection (5)(f).

(g) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

(7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors that providing [~~any~~] a tobacco product, electronic cigarette product, or nicotine product to offenders is a class A misdemeanor.